

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 369 Senior Judges
SPONSOR(S): Full Appropriations Council on General Government & Health Care; Criminal & Civil Justice Policy Council; Ambler
TIED BILLS: None **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice & Courts Policy Committee	8 Y, 0 N	Bond	De La Paz
2) Criminal & Civil Justice Policy Council	13 Y, 0 N, As CS	Bond	Havlicak
3) Full Appropriations Council on General Government & Health Care	32 Y, 0 N, As CS	Darity	Leznoff
4)			
5)			

SUMMARY ANALYSIS

This bill allows a local judicial circuit to create a program, approved by the Chief Justice, providing for additional appointments of retired justices or judges (usually referred to as senior judges), provided that the state's costs for such appointments are advanced by one or more parties of the lawsuit. Specifically:

- Any party may request appointment of a senior judge to conduct pre-trial hearings. Where the request is unilateral, the cost is not taxable against other parties.
- All parties may request appointment of a senior judge to conduct hearings or the trial. The prevailing party's share of the costs advanced is taxable against a nonprevailing party.

To be compensated for service as a retired justice or judge, the justice or judge must not have been defeated or have not failed to be retained in the justice or judge's last judicial office and must not be engaged in the practice of law. This bill removes the restriction regarding a justice or judge who was previously defeated and allows any former justice or judge, who is not currently practicing law, to receive compensation for serving in judicial positions on a temporary basis subject to acceptance and appointment if he or she failed to win re-election or be retained after more than 12 years of service as a justice or judge, or served at least one complete term as a justice or judge but chose not to stand for retention or re-election after his or her most recent term.

This bill appears to have an indeterminate fiscal impact on state and local governments. To the extent parties avail themselves of senior judges, these charges should offset the costs for senior judges who would be paid through trust fund appropriations, thereby reducing the need for General Revenue appropriations for this purpose.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A "senior judge" is an honorary designation that refers to a retired judge serving on assignment to temporary judicial duty. The Florida Constitution and the Florida Rules of Judicial Administration allows the Chief Justice of the Supreme Court to temporarily assign retired justices or judges to any court in which they are qualified to serve.¹ The Florida Rules of Judicial Administration define a retired judge as a judge who is not engaged in the practice of law and who has been a judicial officer of this state.² Retired judges must comply with continuing judicial education requirements, including completion of 30 hours of approved judicial education programs every three years.³

Section 25.073, F.S., provides that a retired justice or judge is a former justice or judge who is not engaged in the practice of law and who has not been defeated in seeking re-election or has not failed to be retained in seeking retention in his or her last judicial office.⁴ No person may serve more than 60 days on temporary duty during a year without the approval of the Chief Justice.⁵

Retired judges may receive compensation as set by law.⁶ Only persons who meet the qualifications set forth in s. 25.073(1), F.S., may be compensated for service as retired justices or judges. Current law sets the compensation for retired justices or judges at not less than \$200 per day.⁷ According to the Florida Supreme Court's office, retired justices or judges are currently paid \$350 per day for service.⁸ In addition, retired justices or judges are entitled to necessary travel expenses.⁹

The Code of Judicial Conduct prohibits retired justices or judges from practicing law or accepting any assignment in which the judge's present financial business dealings or other extra-judicial activities might be affected. A retired justice or judge may serve as a mediator and may be associated with

¹ Article 5, Section (2)(b) Florida Constitution; Florida Rule of Judicial Administration 2.030(a)(3)(A)

² Florida Rule of Judicial Administration 2.030(a)(3)(B)

³ See Fla.R.Jud.Admin. 2.150.

⁴ Section 25.073(1), F.S.

⁵ See s. 25.073(2)(a), F.S.

⁶ See Fla.R.Jud.Admin. 2.030(a)(3)(A).

⁷ See s. 25.073(2)(a), F.S.

⁸ Email correspondence from the State Courts System, dated March 18, 2009, on file with the Civil Justice & Courts Policy Committee staff.

⁹ Section 25.073(2)(b), F.S.

mediation or alternative dispute resolution firms. A retired justice or judge is required to disclose any negotiations or agreements for the provision of mediation services between the judge and any parties or counsel on cases that the judge is assigned to adjudicate.

The state courts utilize the following internal procedures: A retired judge seeking appointment as a senior judge must submit an application to the Chief Justice of the Supreme Court of Florida's office. The Chief Justice's office then requests information from the Judicial Qualifications Committee to determine if there is any reason why that person should not be a senior judge. After the Judicial Qualifications Committee responds to the Supreme Court, the justices review the application and the clerk's office notifies the applicant if the application is accepted. If the application is accepted, the senior judge becomes eligible for service and can be appointed to serve by the chief judge of a district or circuit court.¹⁰

Effect of Bill - Previously Defeated Judge

This bill amends s. 25.073(1), F.S., to remove the restriction relating to justices or judges who lost in a bid for reelection or who were not retained in a retention election for their last term in office. This bill allows any former justice or judge, who is not currently practicing law and who failed to win re-election or be retained after more than 12 years of service as a justice or judge or who served at least one complete term as a justice or judge but chose not to stand for retention or re-election after his or her most recent term, to receive compensation for serving in judicial positions on a temporary basis subject to acceptance and appointment.

This provision may not have an impact or change the Supreme Court's current policy regarding the potential appointment of previously defeated judges. See Drafting Issues or Other Comments herein.

Effect of Bill - Request for Senior Judge

This bill amends s. 25.073, F.S., to allow the chief judge of a circuit to create a program to use senior judges to expedite cases in the circuit. Any such program must be approved by the Chief Justice.

In general:

- Only senior judges who are otherwise eligible for appointment may be used in the program.
- The requesting party or parties must show that the need for appointment because of scheduling difficulties. The program may not be used to avoid the assigned trial judge.
- No party may affect the selection of which senior judge is appointed. Appointments are done by the chief judge of the circuit.

As to pre-trial hearings:

- Any party to the litigation may request that a senior judge be appointed.
- If less than all of the parties to the case requested the use of a senior judge, then those parties must advance the cost and may not seek reimbursement from the other parties. If all parties request the appointment of a senior judge, then the parties split the advance cost and the prevailing party in the litigation may have that party's cost taxed against a non-prevailing party.

As to trials:

- All parties to the litigation must request that a senior judge be appointed.

¹⁰ Telephone Conversation with Della White, office of former Chief Justice R. Fred Lewis, Supreme Court of Florida (January 2, 2008).

- The parties split the advance cost and the prevailing party in the litigation may have that party's cost taxed against a non-prevailing party.

As to the financial arrangements between the parties and the state:

- The requesting party or parties must advance the cost for employing the senior judge, including taxes and travel.
- The minimum time for employment of a senior judge employed under the program is one day. For more than one day, the employment must be for full days.
- The senior judge is paid at the court system's regular daily per diem rate for senior judges.
- The funds collected from the requesting party or parties are deposited into the Operating Trust Fund within the state courts system.
- In order for the program to be cost-neutral, indigent persons may not have prepayment of costs waived.

B. SECTION DIRECTORY:

Section 1 amends s. 25.073, F.S., regarding retired justices or judges assigned to temporary duty.

Section 2 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See Fiscal Comments.

2. Expenditures:

Indeterminate. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Participants who elect to utilize a senior judge will be required to pay the regular per diem rate of such judges.

D. FISCAL COMMENTS:

The bill provides that the State Courts System is to charge participants the total per diem cost of employing a senior judge. Senior judges are paid on a daily rate of \$350 as an OPS employee. The term "cost" should include the daily rate plus other costs to the state including the Social Security and Medicaid match (7.65%, or \$26.78) and travel per diems. Revenues from these charges should offset expenditures for the appointed senior judge, and are to be deposited into the State Courts Operating Trust Fund.

For FY 2008-2009, the trial courts were appropriated \$2,466,243 from the General Revenue Fund for compensation to retired judges.¹¹ To the extent parties avail themselves of senior judges, these charges should offset the costs for senior judges who would be paid through trust fund appropriations, thereby reducing the need for General Revenue appropriations for this purpose. The fiscal impact is, however, indeterminate.

As this bill is drafted, there is no trust fund appropriation to fund the services of senior judges. If the Operating Trust Fund within the State Courts System receives revenues to fund this provision, the Courts would either have to request the Legislative Budget Commission to provide budget authority to expend those funds, or request such authority through their annual Legislative Budget Request.

Furthermore, if the effect of this bill is to increase the total number of trials conducted in the state, local government could incur increased expenditures for juror meals and compensation. However, the potential for such expenditures are also indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article I, s. 21 of the Florida Constitution provides that the "courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Supreme Court of Florida conducted oral arguments in 2003 on committee recommendations regarding the use of senior judges. The court issued an opinion on May 1, 2003, which held in part that justices or judges who fail to win reelection or retention in their last judicial position are not eligible for senior judge service. The court observed that "while qualified and competent judges may occasionally fail to win re-election or retention, we agree with the Committee that concerns of public trust and confidence and deference to the constitutional electoral process dictate that the expressed will of the voters prevail."¹² Therefore, this provision may not have an impact or change the Supreme Court's current policy regarding the potential appointment of previously defeated judges.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 31, 2009, the Criminal & Civil Justice Policy Council adopted one amendment to the bill substantially re-writing the bill. Significant changes include:

- The provision for unilateral request of appointment of a senior judge for a trial was removed.

¹¹ Ch. 2008-152, L.O.F., appropriation 3240.

¹² [In re Report and Recommendations of Committee on Appointment and Assignment of Senior Judges, 847 So. 2d 415 \(Fla. 2003\).](#)

- Allowable grounds for a request were added, as was a prohibition on seeking a senior judge solely as a means of avoiding the assigned full-time judge.
- Payment provisions were clarified.

The bill was then reported favorably with a council substitute.

On April 20, 2009, the Full Appropriations Council on General Government & Health Care adopted one amendment that is similar to HB 525. The amendment provides that a judge who was defeated at the polls may serve as a senior judge. The bill was then reported favorably with a council substitute.